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Freedom Industries Files Bankruptcy After Elk River Spill

By Erik Larson - Jan 18, 2014

Freedom Industries Inc., the chemical maker whose leaky storage tank polluted the Elk River last week and shut down water service in West Virginia's biggest city, filed for bankruptcy to cope with the subsequent lawsuits.

Freedom Industries listed assets and debt of \$1 million to \$10 million each in a Chapter 11 petition filed yesterday in U.S. Bankruptcy Court in Charleston, West Virginia. The company said the lawsuits and more stringent payment demands from vendors since the incident compelled it to seek court protection.

"They are woefully underestimating their liabilities," said Aaron Harrah, a lawyer representing the owner of a Charleston bar and restaurant in a lawsuit against Freedom. Harrah said in a phone interview that he's hopeful his client will still get a payout from Freedom Industries.

A bankruptcy filing halts most litigation, forcing plaintiffs to view with other creditors for a share of a company's assets. More than two dozen lawsuits have been filed since the accident, which led President Barack Obama to declare a state of emergency for the affected counties. The state attorney general is investigating the spill.

100 Hospitalized

On Jan. 9, West Virginia officials discovered a leak from a 35,000-gallon (133,000-liter) tank of 4-methylcyclohexane methanol, a chemical used in coal processing. About 7,500 gallons escaped from a one-inch hole, contaminating water for about 300,000 people and sending more than 100 to the hospital.

Freedom Industries said the current hypothesis for the accident is that a local water line broken next to its plant, causing the land underneath the tank to freeze "in the extraordinary frigid temperatures in the days immediately preceding the incident," according to bankruptcy papers.

A woman who answered the phone at Freedom Industries' headquarters and declined to give her name said no one at the company was commenting to the media.

"The petition and related pleadings speak for themselves," Mark Reedander, the company's bankruptcy lawyer, said in a statement, declining to comment further.

Companies facing legal costs and damages following accidents may use U.S. bankruptcy law to protect assets. In August, Montreal, Maine & Atlantic Railway Ltd., the operator of the runaway oil train that exploded and killed 47 people in a Quebec town, said it was forced to file for bankruptcy because of potential liability from the crash.

Four-Way Merger

Charleston-based Freedom Industries was formed in 1986 and supplies specialty chemicals to the steel, cement and coal-mining industries. The closely held company completed a four-way merger nine days before the leak was discovered.

The four companies had total revenue of about \$25.7 million in fiscal 2012 and \$30.7 million in 2013, according to court filings. Freedom Industries' equity is 100 percent owned by Chemstream Holdings Inc., according to court filings.

Freedom Industries is seeking permission to borrow as much as \$5 million to continue operations during the bankruptcy. It said that without the extra liquidity, it will "have no choice but to liquidate."

Among its 20 biggest unsecured creditors are Archer-Daniels-Midland Co., owed about \$429,000, and Eastman Chemical Co. (EMN), owed more than \$127,000, according to court papers.

Chemical Maker

Freedom Industries and Eastman, the maker of the chemical that fouled the river, were sued Jan. 13 by local businesses and residents for creating a nuisance and concealing cancer-causing compounds, among other allegations.

Another case names the West Virginia-American Water Co. alongside Freedom Industries. The utility failed to deal promptly with the emergency and had no procedures in place to prevent chemicals from getting into the water system, according to a complaint filed Jan. 10 in Kanawha County Circuit Court in Charleston.

Harris said he and his colleagues are still investigating Freedom and other companies that may have contributed to the spill.

"The mill continues to run," he said. "Even though there are businesses with their water back, there are other businesses serving bottled water, trucking in ice. You can imagine people are pretty skittish about drinking this water."

The case is In re Freedom Industries Inc., 14-bk-20017, S. Bankruptcy Court, Southern District of West Virginia (Charleston).

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